IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

MACON COUNTY INVESTMENTS, INC.; REACH ONE; TEACH ONE OF AMERICA, INC.,	)	
PLAINTIFFS,	)	
v.	)	**CIVIL ACTION NO.: 3:06-cv-224-WKW**
SHERIFF DAVID WARREN, in his official capacity as the SHERIFF OF MACON COUNTY, ALABAMA,	)	
DEFENDANT.	)	

DEFENDANT SHERIFF WARREN'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT

COMES NOW, Defendant Sheriff David Warren ("Sheriff Warren"), who has been sued in his official capacity as Sheriff of Macon County, Alabama, by and through his counsel of record, and responds to Plaintiff Reach One, Teach One and Macon County Investment, Inc.'s ("MCII") First Amended Complaint for Injunctive Relief and Declaratory Judgment (First Amended Complaint) as follows:

Except to the extent expressly, specifically and unambiguously admitted herein, Sheriff Warren denies each and every allegation contained in the First Amended Complaint and demands strict proof thereof. The Defendant answers the allegations of the First Amended Complaint, paragraph by paragraph, as follows:

JURISDICTION

1. Defendant admits that the Plaintiffs seek relief under the laws and statutes cited. Sheriff Warren denies that he has violated any law or statute.

PARTIES

2. Sheriff Warren is without sufficient information upon which to either admit or deny the material allegations in paragraph 2 of the Plaintiffs' First Amended Complaint and, therefore, denies the same and demands strict proof thereof.

3. Sheriff Warren is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 of the Plaintiffs' First Amended Complaint and, therefore, denies the same and demands strict proof thereof.

4 Sheriff Warren admits that he currently serves as the Sheriff of Macon County, Alabama. The remaining allegations contained in Paragraph 4 are legal conclusions that do not call for a response from Sheriff Warren.

FACTUAL ALLEGATIONS

5. Sheriff Warren admits that Alabama law provides for amendments to the Alabama Constitution which are local in nature. Sheriff Warren admits that the Alabama Legislature has authorized bingo in certain counties by local amendment under certain circumstances. The remaining allegations contained in Paragraph 5 are legal conclusions that do not call for a response. To the extent a response is deemed to be required, Sheriff Warren denies the same and demands strict proof thereof.

6. Sheriff Warren denies that the Alabama Legislature ratified Amendment No. 744 to the Alabama Constitution. Instead, Sheriff Warren states that the voters of Macon County ratified Amendment No. 744 to the Alabama Constitution. Sheriff Warren admits that Amendment No. 744 governs the operation of bingo gaming in Macon County. Sheriff Warren also states that Amendment No. 744 is a public

document which this Court can take judicial notice of and which speaks for itself. Sheriff Warren denies the remaining allegations contained in Paragraph 6 of the First Amended Complaint and demands strict proof thereof.

7. Admitted.

8. Sheriff Warren states that the "Rules and Regulations for the Licensing and Operation of Bingo Games in Macon County, Alabama" is a written document and speaks for itself.

9. Sheriff Warren denies each and every allegation contained in Paragraph 9 of the First Amended Complaint and demands strict proof thereof.

10. Sheriff Warren admits that he promulgated the "First Amended and Restated Rules and Regulations for the Licensing and Operation of Bingo Games in Macon County, Alabama" on June 2, 2004. Sheriff Warren states that the "First Amended and Restated Rules and Regulations for the Licensing and Operation of Bingo Games in Macon County, Alabama" and the Commentary contained therein is a written document and speaks for itself. Sheriff Warren specifically denies that the amendments were promulgated "[w]ithout further justification and for no announced reasons." Finally, Sheriff Warren denies each and every remaining allegation contained in Paragraph 10 of the First Amended Complaint and demands strict proof thereof.

11. Sheriff Warren states that the "First Amended and Restated Rules and Regulations for the Licensing and Operation of Bingo Games in Macon County, Alabama" and the Commentary contained therein is a written document that speaks for itself and no response is required.

12. Sheriff Warren denies each and every allegation contained in Paragraph 12 of the First Amended Complaint and demands strict proof thereof.

13. Sheriff Warren admits that he promulgated the "Second Amended and Restated Rules and Regulations for the Licensing and Operation of Bingo Games in Macon County, Alabama" on January 1, 2005. Sheriff Warren states that the "Second Amended and Restated Rules and Regulations for the Licensing and Operation of Bingo Games in Macon County, Alabama" and the Commentary contained therein is a written document and speaks for itself. Sheriff Warren specifically denies that the amendments were promulgated "without actual justification, and no announced reason." Finally, Sheriff Warren denies each and every remaining allegation contained in Paragraph 13 of the First Amended Complaint and demands strict proof thereof.

14. Sheriff Warren denies each and every allegation contained in Paragraph 14 of the First Amended Complaint and demands strict proof thereof

15. Sheriff Warren admits that Plaintiff submitted an application for a Class B Bingo License on or about July 25, 2005. Sheriff Warren denies the remaining allegations contained in Paragraph 15 and demands strict proof thereof.

16. Sheriff Warren admits that he has repeatedly stated that anyone who satisfied the requirements of the bingo regulations would be issued a license. Sheriff Warren admits that his office has not issued a Class B Bingo License to Plaintiff Reach One, Teach One.

17. Sheriff Warren is without sufficient information to either admit or deny the allegations contained in Paragraph 17 of the First Amended Complaint and, therefore, denies the same and demands strict proof thereof.

EQUAL PROTECTION CLAIM

18. Sheriff Warren incorporates by reference his responses to Paragraphs 1-17 hereinabove.

19. Sheriff Warren states that the "First Amended and Restated Rules and Regulations for the Licensing and Operation of Bingo Games in Macon County, Alabama" and the "Second Amended and Restated Rules and Regulations for the Licensing and Operation of Bingo Games in Macon County, Alabama" both contain published commentaries which explain the basis for the amendments to the rules. Sheriff Warren denies each and every remaining allegation contained in Paragraph 18 of the First Amended Complaint and demands strict proof thereof.

20. Sheriff Warren denies each and every allegation contained in Paragraph 19 of the First Amended Complaint and demands strict proof thereof.

21. Sheriff Warren denies each and every allegation contained in Paragraph 20 of the First Amended Complaint and demands strict proof thereof.

22. Sheriff Warren denies each and every allegation contained in Paragraph 21 of the First Amended Complaint and demands strict proof thereof.

23. Sheriff Warren denies each and every allegation contained in Paragraph 22 of the First Amended Complaint and demands strict proof thereof.

24. Sheriff Warren denies each and every allegation contained in Paragraph 23 of the First Amended Complaint and demands strict proof thereof.

25. Sheriff Warren denies each and every allegation contained in Paragraph 24 of the First Amended Complaint and demands strict proof thereof.

26. Sheriff Warren denies each and every allegation contained in Paragraph 25 of the First Amended Complaint and demands strict proof thereof.

27. Sheriff Warren denies each and every allegation contained in Paragraph 26 of the First Amended Complaint and demands strict proof thereof.

PRAYER FOR RELIEF

As to Plaintiffs' Prayer for Relief, Sheriff Warren denies that the Plaintiffs are entitled to any of the relief requested therein.

AFFIRMATIVE DEFENSES

The Defendant states the following affirmative defenses without assuming the burden of proof of such defenses that would otherwise rest on Plaintiffs. The Defendant reserves the right to assert other defenses as discovery proceeds.

FIRST DEFENSE

Except to the extent specifically admitted above, the allegations of the First Amended Complaint are denied and Sheriff Warren demands strict proof. The Plaintiffs' claims are barred, in whole or in part, for failure to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiff MCII lacks standing to bring this action.

THIRD DEFENSE

The Plaintiff Reach One, Teach One lacks standing to bring this action.

FOURTH DEFENSE

The Sheriff Warren avers that he is not guilty of any violation of the Plaintiffs' constitutional rights.

FIFTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have failed to exhaust their administrative remedies.

SIXTH DEFENSE

The Defendant denies that any of its actions were arbitrary or capricious.

SEVENTH DEFENSE

Subject matter jurisdiction is lacking in this action because Plaintiffs' claim is not yet ripe for adjudication and/or is moot.

EIGHTH DEFENSE

Plaintiffs' claim is barred because no claim or controversy is presented in this case.

NINTH DEFENSE

Plaintiffs' claim is barred because a decision in this matter would not affect the rights of the Plaintiffs in this case.

TENTH DEFENSE

Plaintiffs' Equal Protection claim is barred because Plaintiffs cannot show that the bingo rules at issue are not rationally related to a legitimate government interest.

Plaintiffs' claim is also barred because Plaintiff has not and cannot show that Sheriff Warren's actions were triggered by a discriminatory motive or purpose.

ELEVENTH DEFENSE

The Defendant denies that Plaintiffs are entitled to any judgment against it, or for any relief whatsoever.

TWELFTH DEFENSE

The Defendant avers that all actions were taken in good faith.

THIRTEENTH DEFENSE

The Defendant pleads immunity under both the Federal and State Constitutions as well as Statutory and Common Law immunity.

FOURTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Defendant is entitled to discretionary function immunity, sovereign immunity, and qualified good faith immunity

FIFTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Defendant is entitled to absolute immunity pursuant to the Eleventh Amendment. See U.S. Constitution, Amendment XI.

SIXTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Defendant is entitled to absolute immunity pursuant to Article I, § 14 of the Alabama Constitution.

SEVENTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because Defendant is entitled to immunity pursuant to ALA. CODE § 6-5-338.

EIGHTEENTH DEFENSE

Any equitable or declaratory relief sought by the Plaintiffs are barred by the doctrines of waiver, estoppel, laches, or unclean hands.

NINETEENTH DEFENSE

Defendant denies that he is guilty of any wrongdoing, error, act, or omission that may have caused damages to Plaintiffs.

TWENTIETH DEFENSE

The Defendant pleads the general issue.

TWENTY-FIRST DEFENSE

The First Amended Complaint and each count thereof is barred by the applicable statute of limitations.

TWENTY-SECOND DEFENSE

The Defendant expressly reserves the right to amend its Answer to assert other defenses as discovery proceeds.

Respectfully submitted,

/s/ Fred D. Gray, Jr. .
Attorneys for Defendant,
David Warren, Sheriff of Macon County,
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CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Kenneth L. Thomas, Esq.
Ramadanah M. Salaam, Esq.
Gary A. Grasso, Esq.
Adam R. Bowers

And I certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

None.

/s/ Fred D. Gray, Jr. .

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